

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Plaintiff,

v.

TRAVIS THOMPSON, Individually and
doing business as Thompson Enterprises, LLC
and Gold's Gym, and THOMPSON
ENTERPRISES, LLC a Delaware Limited Liability
Company, doing business as
Gold's Gym,

Defendants.

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through Paul G. Summers, the Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1), 47-18-114, and 47-18-320 at the request of Mark Williams, Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance ("Division"). The Division has reason to believe that the Defendants named herein have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 et seq., the Tennessee Health Club Act, Tenn. Code Ann. § 47-18-301 et seq., and that this action is in the public interest.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provision of Tenn. Code Ann. § 47-18-108.

Venue is proper in Davidson County because it is a county in which Defendants conduct or have conducted business. See Tenn. Code Ann. § 47-18-108(a)(3). Defendants have been provided with the ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2).

II. PARTIES

2. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by the Attorney General Paul G. Summers, at the request of the Division. (See Exhibit 1, Affidavit and Verification of Mark Williams, Director of the Division of Consumer Affairs).

3. Defendant Travis Thompson, individually and doing business as Thompson Enterprises, LLC and Gold's Gym ("Defendant Travis Thompson") is a Tennessee resident with a principal place of business at 5373 Mt. View Road, Antioch, Tennessee 37013.

4. Defendant Thompson Enterprises, LLC is a Delaware limited liability company doing business as Gold's Gym which was formed on June 24, 1999. Defendant Travis Thompson is a 34% owner and the president of Defendant Thompson Enterprises, LLC.

III. FACTUAL ALLEGATIONS

Upon information and belief, the State alleges as follows:

5. In the spring of 1999, Defendant Travis Thompson purchased a health club ("Gold's Gym") as defined by Tenn. Code Ann. § 47-18-301(3) which was unregistered.

6. For an exact time period unknown to the Plaintiff but approximately three months, Defendant Travis Thompson operated Gold's Gym, a health club as defined by Tenn. Code Ann. § 47-18-301(3). 7. For an exact time period unknown to the Plaintiff but approximately one week, Defendant Thompson Enterprises, LLC operated Gold's Gym, a health club as defined by Tenn. Code Ann. § 47-18-301(3).

8. The operation of Gold's Gym by Defendants, as alleged herein, constitutes "trade", "commerce" and/or a "consumer transaction" and the offering of or providing of "goods" and/or "services" as defined in Tenn. Code Ann. §§ 47-18-103(5), (8) & (9).

9. In the spring of 1999 when Defendant Travis Thompson purchased the health club doing business as "Gold's Gym," he did not notify the Division of the change in the club's ownership.

10. Until July 1, 1999, Defendants Travis Thompson and/or Thompson Enterprises, LLC operated Gold's Gym without a valid certificate of registration from the Division.

11. Defendant Travis Thompson received numerous notices from the Division that Gold's Gym needed

to be registered. Such notices were sent at least April 1, 1999, April 15, 1999, April 30, 1999 and May 10, 1999.

12. Representatives of the Division also telephoned Gold's Gym on at least May 10, 1999, May 24, 1999, May 26, 1999 and June 2, 1999 and asked to speak to Defendant Travis Thompson to personally inform him of the non-registration but the calls were not returned.

13. Pursuant to Tenn. Code Ann. § 47-18-303(2), any health club agreements entered into while Defendants were unregistered or when Defendants or the former owners failed to maintain its registration are unenforceable against the respective buyers.

14. On or about June 17, 1999, Defendant Travis Thompson, under the name "Thompson Enterprises, LLC " and while Gold's Gym was still unregistered, purchased another health club's membership agreements. The purchased club was owned by Hester Health Systems, LLC doing business as Powerhouse Gym ("Powerhouse Gym"), formerly located at 5252 Hickory Hollow Parkway, Nashville, TN 37221.

15. Defendant Travis Thompson, under the name "Thompson Enterprises, LLC" purchased approximately 3,000 membership agreements from Powerhouse Gym. Prior to the purchase, Gold's Gym had approximately 600 to 700 members and added approximately 25 new members each month.

16. The Powerhouse Gym health club agreements that Defendant Travis Thompson purchased are now unenforceable contracts under Tenn. Code Ann. § 47-18-303(2) because Gold's Gym was unregistered at the time it acquired the agreements.

17. Defendants sold health club agreements to consumers while unregistered and have failed to inform those buyer's of health club agreements that Gold's Gym was unregistered at the time the agreements were entered into.

18. Defendants have failed to inform the affected consumers with existing health club agreements that their health club agreements are unenforceable.

19. Defendants have continued to bill consumers or otherwise notify them that payments are due, accept payments and collect on the unenforceable health club agreements.

IV. VIOLATIONS OF THE LAW

20. After purchasing Gold's Gym, Defendant Travis Thompson failed to notify the Division of the change in ownership as required by Tenn. Code Ann. § 47-18-313 (a) and (b). Under Tenn. Code Ann. § 47-18-320, this violation constitutes an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act.

21. After taking over ownership of Gold's Gym, Defendant Thompson Enterprises, LLC failed to notify the Division of the change in ownership as required by Tenn. Code Ann. § 47-18-313 (a) and (b). Under Tenn. Code Ann. § 47-18-320, this violation constitutes an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act.

22. By purchasing a health club without a valid certificate of registration, Defendant Travis Thompson violated the Health Club Act, Tenn. Code Ann. § 47-18-301 et seq. Under Tenn. Code Ann. § 47-18-320, this violation constitutes an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act.

23. By taking over the ownership of a health club without a valid certificate of registration, Defendant Thompson Enterprises, LLC violated the Health Club Act, Tenn. Code Ann. § 47-18-301 et seq. Under Tenn. Code Ann. § 47-18-320, this violation constitutes an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act.

24. By operating a health club without a valid certificate of registration, Defendants violated Tenn. Code Ann. § 47-18-302(a). Under Tenn. Code Ann. § 47-18-320, this violation constitutes an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act.

25. By purchasing health club agreements from Powerhouse Gym when Gold's Gym was not a registered health club, Defendant Travis Thompson has engaged in an unfair and deceptive act or practice in violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-104(a) and (b)(27).

26. By operating a health club without a valid certificate of registration, Defendants Travis Thompson and Thompson Enterprises, LLC, caused a likelihood of confusion as to the approval and certification of the health club's goods and services in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(2), (b)(3), and b(27).

27. By representing or implying that any health club agreements entered into by Defendants Travis Thompson and Thompson Enterprises, LLC, while Defendants were not registered are enforceable against the buyer, Defendants have represented that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(12), and (b)(27).

28. By representing or implying that any health club agreements entered into by consumers with Powerhouse Gym purchased by Defendant Travis Thompson while Gold's Gym was not registered are enforceable against the consumer buyer, Defendants Travis Thompson and Thompson Enterprises, LLC, have represented that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(12), and (b)(27).

29. By failing to inform the persons with the health club agreements that the agreements are

unenforceable, Defendants Travis Thompson and Thompson Enterprises, LLC, have engaged in unfair or deceptive acts in violation of Tenn. Code Ann. §§ 47-18-104(a) and (b)(27).

30. By selling health club agreements while unregistered and failing to inform persons that the health club was unregistered, Defendants Travis Thompson and Thompson Enterprises, LLC, have engaged in unfair or deceptive acts in violation of Tenn. Code Ann. §§ 47-18-104(a) and (b)(27).

**PRAYER FOR RELIEF WHEREFORE, PREMISES CONSIDERED, THE STATE OF
TENNESSEE PRAYS:**

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108, and 47-18-116.

(2) That process issue and be served upon Defendants requiring them to appear and answer this Complaint.

(3) That this Court adjudge and decree that Defendants have engaged in the aforesaid acts or practices, which are violative of the Tennessee Consumer Protection Act and the Tennessee Health Club Act.

(4) That this Court enjoin Defendants from engaging in the aforesaid acts or practices, which are violative of the Tennessee Consumer Protection Act and the Tennessee Health Club Act.

(5) That this Court adjudge and decree that the Defendants are liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, as provided by Tenn. Code Ann. § 47-18-108(b).

(6) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses suffered by reason of the alleged violations of the Tennessee Consumer Protection Act, including but not limited to requiring that Defendants notify in writing each and every consumer that entered into a health club agreement with Defendants while Defendants were not registered or the health club's registration had lapsed, or were purchased by Defendants from an unregistered health club or purchased by Defendants while unregistered, that the agreement is unenforceable against the consumer and the consumer is entitled to a refund less that portion of the total price which represents actual use of the facilities and less the cost of goods and services consumed by the consumer as provided in Tenn. Code Ann. § 47-18-303 plus statutory interest.

(7) That this Court adjudge and decree that the Defendants pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).

(8) That all costs in this cause be taxed against Defendants.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

